

HOUSE JOINT RESOLUTION 685

By Harmon

A RESOLUTION urging the Federal Communications Commission to allow the jamming of commercial mobile radio services within state correctional institutions.

WHEREAS, drugs and weapons are hardly the most ubiquitous or even the most dangerous forms of contraband found in contemporary correctional facilities; today, commercial mobile radio services (CMRS), most commonly found in the form of the cellular telephone, allow many prison inmates to continue committing crimes despite almost constant supervision and radical separation from the larger population imposed on these prisoners; and

WHEREAS, while some inmates may simply want to place cellular calls to relatives or loved ones, many prisoners have more nefarious designs for their illicit phones; and

WHEREAS, in California, home to the country's largest state prison system, more than twenty-eight hundred cellular telephones were confiscated from inmates in 2008; a California prison staff member recently admitted to earning more than one hundred thousand dollars over the course of one year by selling cell phones to inmates; and

WHEREAS, for a prisoner who has obtained a cell phone, the device can be far more lucrative than even a sizeable one-time sale of drugs; the inmate can rent the cell phone to other prisoners repeatedly, receiving a respectable sum in exchange for each use of the device; and

WHEREAS, in many cases, prisoners are able to contact other prisoners by cell phone and coordinate criminal activity within the facility; in other instances, the illegal use of cell phones by inmates may endanger the safety and well-being of people far from any prison; and

WHEREAS, a cell phone can make escaping from prison easier; according to Richard Subia, Assistant Director of California's Division of Adult Institutions, one escapee was able to

place a cellular call to a girlfriend, who then met him in a town near the prison shortly after his escape and absconded with the man; and

WHEREAS, in some cases, these cellular criminals commit crimes at least as egregious as the ones that precipitated their incarceration in the first place; Baltimore prosecutors have filed murder charges against a state prison inmate, already incarcerated in the state's Supermax facility on murder charges, for allegedly using a cell phone to order the execution of a witness in the inmate's ongoing murder trial; and

WHEREAS, in March 2009, the same Maryland Supermax prisoner, already accused of orchestrating a murder via cell phone, was accused of again using a cell phone to intimidate a witness, who did indeed recant his original testimony in the witness execution trial; and

WHEREAS, this evidence suggests that strong measures must be taken to prevent the use of cell phones by the inmates of state correctional facilities, and despite objections from wireless providers and other related concerns, the jamming of CMRS is the most viable option for ensuring that prisoners, armed with cell phones, cannot continue to commit crimes during their incarceration; and

WHEREAS, by broadcasting a stronger signal on the same frequency used to connect a cell phone to a nearby cell tower, communication through that phone is effectively precluded; the technology for blocking, or jamming, cell phones is fairly simple, but largely unavailable; and

WHEREAS, the CMRS industry has argued that jamming devices, deployed by anyone anywhere, even in prisons by corrections officials with the best of intentions, might interfere with the proper and legal use of CMRS by members of the public; granted, at any given moment, countless Americans are using their cell phones for perfectly legitimate reasons; and

WHEREAS, the CMRS industry has also cited public safety as a major concern in the debate over jamming, and there may be some merit to their argument given that E-9-1-1 service, Amber Alerts, and cell phones used by law enforcement all rely on CMRS; and

WHEREAS, in addition, were jamming devices to become available to correctional institutions, the industry argues, these devices could be illegally diverted, perhaps before or during shipment to the prison, and used by some unauthorized party to interfere with legitimate CMRS; and

WHEREAS, the industry suggests that there are alternatives to CMRS jamming, and these should be implemented instead of jamming equipment; dogs trained to locate cell phones by smell and devices designed to detect cell phone use are cited as examples; and

WHEREAS, finally, the industry has repeatedly insisted that § 333 of the Communications Act of 1934, as amended, precludes the Federal Communications Commission from authorizing any jamming; and

WHEREAS, the proliferation of cell phones and their perfectly legitimate use by millions of Americans could complicate any effort to jam CMRS within state correctional institutions, and the fact that CMRS now allows members of law enforcement and citizens-at-large to communicate more effectively and more quickly for the sake of public safety is certainly reason to take great care in instituting CMRS jamming in state prison facilities; and

WHEREAS, despite these objections, it is the contention of many correctional officials and policy makers that jamming CMRS within those prisons would itself be a step toward protecting public safety, and furthermore, it could be instituted without posing any significant threat to the legitimate use of cell phones or any other CMRS technology; and

WHEREAS, first, strict technical standards should be applied to all jamming equipment; it is technically feasible to deploy jamming devices in prisons that would only affect cell phone users within prison walls; and

WHEREAS, authorization procedures should be implemented for all jamming equipment; the manufacture of jamming devices must be carefully controlled, the manufacturing concerns be licensed to strict standards, and the list of possible purchasers be limited to correctional facilities only; and

WHEREAS, the aforementioned alternatives, phone-sniffing dogs and cell phone detecting equipment, have proven far too expensive to implement on any meaningful scale; jamming is simply the most cost-effective and reliable means for achieving a most important end, the disruption of dangerous criminal activity within and without the walls of America's prisons; and

WHEREAS, as for the Communications Act of 1934, while it is arguable that jamming CMRS without the express authorization of the Federal Communications Commission would

constitute an illegal act, it is hardly an objective fact that the act absolutely precludes jamming under any and all circumstances; and

WHEREAS, a petition has recently been circulated by the South Carolina Department of Corrections requesting that the FCC authorize CMRS jamming within state correctional facilities; this document has already been signed not only by the corrections commissioner of South Carolina, but by the corrections commissioners of Georgia, Alabama, Tennessee, and Arkansas as well; and

WHEREAS, according to the petitioners, FCC rules could be amended and strict standards for CMRS jamming could be instituted to allow all state correctional facilities to jam CMRS with no untoward consequences to legitimate cell phone use or the CMRS industry as a whole; and

WHEREAS, if the FCC were to authorize the use of jamming equipment within state correctional facilities, a major step would have been taken toward better protecting the safety of our citizens and the employees of our state correctional facilities, here in Tennessee and across the United States; now, therefore,

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE ONE HUNDRED SIXTH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, THE SENATE CONCURRING, that it is the sense of this General Assembly that instituting the jamming of commercial mobile radio services within the confines of our state correctional facilities constitutes a vital public safety measure, and, moreover, one that does not violate the Federal Communications Act of 1934 or disrupt the legitimate use of cell phones or any other CMRS technology.

BE IT FURTHER RESOLVED, that we hereby urge the Federal Communications Commission to allow the officials of our state correctional facilities to institute the jamming of CMRS, so that the safety of Tennesseans and all Americans might be better protected.

BE IT FURTHER RESOLVED, that a certified copy of this resolution be transmitted to the Federal Communications Commission.